

REMARKS

Reconsideration of the application, as amended, is respectfully requested, in view of the following remarks.

Claim 1 has been amended to incorporate the limitations of claims 7 and 8, which have been canceled without prejudice. Claim 14 has been amended to incorporate the limitations of claims 18 and 20 which, accordingly have been canceled without prejudice. Claims 10, 11, 16 and 17 have also been canceled without prejudice. Claim 6 has been amended to remove an obvious redundancy amount the recited elements.

With respect to the rejection based on formalities of Claims 21-23, Claims 21 and 22 have been amended to correct dependencies and Claim 23 has been amended to correct its grammar.

In view of the Office's objection to the term, in order to make claim 14 clearer, the term "health active" has been deleted from the claim.

It is respectfully submitted that the term "probiotic" is used appropriately. The claims are directed not to a "probiotic" but to a "probiotic...which [has] been rendered non-viable." It is not apparent why a probiotic could not be rendered non-viable or claimed as such.

As to the recitation concerning fermentation, the Office appears to rely on fact that acid is said to be generated under the conditions of the Lee reference to assume that acid is always generated with non-viable bacteria. It is submitted that this leap is improper

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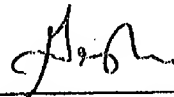
and does not justify the Office's assumption that applicant's invention does not work as recited.

With respect to the rejection of certain claims based on the Lee patent, applicants have incorporated into claim 1 the limitations of claims which are not rejected over Lee, namely claims 7 and 8. Therefore, since claim 1 incorporates the limitations of these non-rejected claims, it is respectfully requested that the rejection of claim 1 and those depending therefrom be withdrawn. Likewise, claim 14 has been amended to incorporate the limitations of claim 20 which is not rejected over Lee. Therefore, the rejection of claim 14 and those depending therefrom should be withdrawn.

Claims 10-11 rejected on the Meister et al. patent have been canceled without prejudice, so their rejection is presently moot. The limitations of claim 20, which is not rejected over Meister et al., have been incorporated into claim 14, so the rejection of claims 14 and those depending therefrom would appear to be overcome.

In view of the foregoing, it is respectfully requested that the application be allowed. If the Office is of the view that a telephonic discussion of this case with applicant's legal and technical representatives would be of assistance, the undersigned would be pleased to attempt to arrange such a discussion.

Respectfully submitted,



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